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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,968	07/03/2001	Harjit Singh	7513.01439	9945

7590

08/25/2003

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EXAMINER

WEIER, ANTHONY J

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 08/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/898,968

Applicant(s)

SINGH, HARJIT

Examiner

Anthony Weier

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other:

1. Claims 3, 8, and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

2. In claim 3, "the agglomerator" lacks antecedent basis.

3. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: A method of providing a liquid drink.¹

4. Claim 11 is confusing in that it calls for agglomerating "liquid powdered milk"; it is not clear how the liquid is also powdered.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger et al taken together with Connelly et al.

Geiger et al discloses a method for producing a beverage wherein beverage powders such as dry milk are mixed with water within a vending machine and dispensed to a receptacle on-demand (e.g. col. 1, lines 13-30). Geiger et al further discloses the use of said powder in a filled pouch format.

¹ The claim only gets to a powder mixture in a package. No consumable beverage is attained in this method claim.

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The claims further call for said dry milk as being an agglomerated product produced via the steps of pasteurizing same, evaporating same to a certain level, spray drying, and finally, treating with a fluid bed dryer. However, Connelly teaches preparing a milk powder by heating to a pasteurizing extent, evaporating same, spray drying, and treating with a fluid bed dryer. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed for more efficient manufacturing as called for by Connelly.

Connelly is silent regarding the extent of evaporation that is accomplished. However, such determination would have been well within the purview of one having ordinary skill in the art, and it would have been further obvious to have arrived at such values through routine experimental optimization.

Claim 4 further calls for heating the mixture of ingredients. Although the references a primarily show the heating of the mixture by way of the addition of hot water, it is notoriously well known to prepare beverages via mixes and heat same following this. For example, one may make instant coffee by adding water in a coffee cup which is then microwaved. Absent a showing of unexpected results, the concept of heating the beverage mixture is not seen as providing a patentable distinction.

The claims further call for steps of whipping the mixture. However, such step is well known in vending hot beverages, and it would have been further obvious to have included same as an art recognized beverage preparation step.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger et al taken together with Connelly et al (as applied above) further in view of Fazio.

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8. Claim 11 further calls for caseinate and dry milk powder as a creamer mixture.

However, it is well known to prepare a creamer in such way, as taught, for example by Fazio. Geiger et al discloses the use of powdered creamer in vending machines. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed same as an art recognized form of creamer in the vending process of Geiger et al.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 703-308-3846. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Anthony Weier

Anthony Weier
Primary Examiner
Art Unit 1761



8/20/03